

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2007

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP720

Cir. Ct. No. 2002CV152

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

TERRY P. DECICCO,

PLAINTIFF-APPELLANT,

MARY K. CLAAS A/K/A MARY K. DECICCO,

PLAINTIFF,

V.

GUARDIAN PIPELINE LLC,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Jefferson County:
JOHN ULLSVIK, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Terry DeCicco appeals from a judgment in favor of Guardian Pipeline, LLC. This is one of several cases brought by landowners against Guardian Pipeline related to a 140-mile-long underground natural gas

pipeline that Guardian Pipeline installed between Joliet, Illinois, and Ixonia, Wisconsin. In this case, like the others, Guardian Pipeline condemned a portion of the landowner's property to obtain an easement for the pipeline. In a trial to determine just compensation for the partial taking, the jury decided the loss in value to landowner Terry DeCicco was \$5,600. The circuit court entered judgment in favor of Guardian Pipeline for \$7,731 due to a prior jurisdictional offer. We affirm.

¶2 DeCicco first argues that the circuit court erroneously exercised its discretion in excluding evidence related to the fear and stigma associated with natural gas pipelines. DeCicco casts his argument broadly, but refers specifically only to certain testimony by his real estate expert Kurt Kielisch. Evidence regarding fear of natural gas pipelines and the stigma associated with them in partial takings cases is relevant only “where the requisite nexus has been established by a qualified expert between the evidence of fear regarding the presence of a natural gas transmission pipeline on condemned property and the fair market value of that property following the taking....” *Arents v. ANR Pipeline Co.*, 2005 WI App 61, ¶18, 281 Wis. 2d 173, 696 N.W.2d 194. “The admissibility of expert evidence is left to the sound discretion of the trial court.” *Id.*, ¶13. “We will sustain the trial court’s evidentiary rulings if the trial court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion.” *Id.*, ¶12 (citation omitted).

¶3 Contrary to DeCicco’s assertion, the circuit court permitted Kielisch to testify about certain aspects of the fear and stigma associated with natural gas pipelines. While the circuit court allowed this “fear and stigma” evidence, it did not allow Kielisch to discuss issues pertaining to the danger, risks, or safety of pipelines in the presence of the jury. The circuit court explained that it did not

want to “open up the [t]rial to a battle of experts, engineers, [and] actuaries about the safety of the pipeline” because the jury would be misled into thinking this case is about the safety of the pipeline when, in fact, the case is about how the existence of the pipeline affects the value of DeCicco’s land.

¶4 The circuit court was concerned with keeping the focus of the trial on the proper issues. This decision was appropriate under WIS. STAT. § 904.03 (2005-06),¹ which provides that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....” The court concluded that the relevance of the safety and risk evidence would be substantially outweighed by the danger of unfair prejudice and would confuse the jury. Because the circuit court applied the appropriate legal standard to the facts of this case and its decision is well reasoned and reasonable, we conclude that the circuit court properly exercised its discretion when it made this evidentiary ruling.²

¶5 DeCicco next argues that he should have been allowed to present information at trial about the disclosure requirements under the common law and under WIS. STAT. ch. 709, which he argues requires him to disclose the presence of the pipeline as a real estate defect in future real estate transactions, including

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² DeCicco also argues that Kurt Kielisch was prevented by the circuit court’s order from explaining to the jury his methodology for computing the value loss to the property and the bases for his ultimate conclusions. DeCicco’s argument is not supported by cites to the record. Our review of the testimony shows that Kielisch *was* permitted to testify about his methodology. Because DeCicco’s argument is not supported by cites to the record as required by WIS. STAT. RULE § 809.19(1)(e), we do not discuss it further. See *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (we need not sift the record for facts that support counsel’s contentions).

detailed information about the potential danger and hazards the pipeline presents. We addressed and rejected the same argument in a related case, *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, ¶29, ___ Wis. 2d ___, 726 N.W.2d 648. Because WIS. STAT. ch. 709 does not require the extensive disclosures DeCicco claimed were necessary, testimony about the requirements of ch. 709 was not relevant at trial. The circuit court properly exercised its discretion in prohibiting it.

¶6 DeCicco next argues that the circuit court made inappropriate comments and asked inappropriate questions during the course of the trial with regard to DeCicco's expert's method for determining the fair market value of the property. DeCicco could have asked the court for a sidebar to interrupt the court's questions if DeCicco believed the court's questions were not appropriate. DeCicco could have moved for a mistrial or requested a curative instruction. He did none of these things. Because he did not raise the issue before the circuit court, he has waived his right to raise this argument on appeal. See *Walsh v. Wild Masonry Co., Inc.*, 72 Wis. 2d 447, 456, 241 N.W.2d 416 (1976).

¶7 Finally, DeCicco argues that his constitutional rights have been violated. Because he has not sufficiently developed his constitutional arguments, we will not consider them further.³ See *Roehl v. American Family Mut. Ins. Co.*,

³ We repeat the same concern here that we noted in *Arents v. ANR Pipeline Co.*, 2005 WI App 61, ¶5 n.2, 281 Wis. 2d 173, 696 N.W.2d 194, and *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, ¶6 n.7, ___ Wis. 2d ___, 726 N.W.2d 648. DeCicco's counsel, Attorney Robert Roth, has once again failed to include proper citations to the record. While counsel has cited to the record in the statement of the case, he has failed to provide record cites in the fact section and makes only scattered record cites throughout the course of the argument section of the brief. Counsel is reminded that he must comply with appellate court rules and that failing to do so may result in sanctions.

222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998) (we may decline to review issues that have been inadequately briefed).

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

